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Attorney for Plaintiff
 Mary Ellen Escareno,

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

| | | |
|---------------------------------------|---|--|
| Mary Ellen Escareno, |) | CASE NO. |
| |) | <u>Civil Rights</u> |
| Plaintiff, |) | |
| |) | COMPLAINT FOR INJUNCTIVE RELIEF |
| v. |) | AND DAMAGES: |
| |) | |
| HILTON SONOMA WINE COUNTRY; |) | <u>1st CAUSE OF ACTION:</u> For Denial of Access |
| PHF II SONOMA LLC, a Delaware Limited |) | by a Public Accommodation in Violation of the |
| Liability Company; ATRIUM |) | Americans with Disabilities Act of 1990 (42 |
| HOSPITALITY LP, a Delaware Limited |) | U.S.C. §12101, <i>et seq.</i>) |
| Partnership, |) | |
| |) | <u>2nd CAUSE OF ACTION:</u> For Denial of Full |
| |) | and Equal Access in Violation of California |
| Defendants. |) | Civil Code §§54, 54.1 and 54.3 |
| |) | |
| |) | <u>3rd CAUSE OF ACTION:</u> For Denial of |
| |) | Accessible Sanitary Facilities in Violation of |
| |) | California Health & Safety Code §19955, <i>et seq.</i> |
| |) | |
| |) | <u>4th CAUSE OF ACTION:</u> For Denial of |
| |) | Access to Full and Equal Accommodations, |
| |) | Advantages, Facilities, Privileges and/or |
| |) | Services in Violation of California Civil Code |
| |) | §51, <i>et seq.</i> (The Unruh Civil Rights Act) |

DEMAND FOR JURY

1 Plaintiff MARY ELLEN ESCARENO, complains of defendants HILTON SONOMA
 2 WINE COUNTRY; PHF II SONOMA LLC, a Delaware Limited Liability Company; ATRIUM
 3 HOSPITALITY LP, a Delaware Limited Partnership, and alleges as follows:

4 **INTRODUCTION:**

5 1. This is a civil rights action for discrimination against persons with physical
 6 disabilities, of which class plaintiff MARY ELLEN ESCARENO and the disability community
 7 are members, including but not limited to 4A4U, for failure to remove architectural barriers
 8 structural in nature at defendants' Hilton Sonoma Wine Country, a place of public
 9 accommodation, thereby discriminatorily denying plaintiff and the class of other similarly
 10 situated persons with physical disabilities access to, the full and equal enjoyment of, opportunity
 11 to participate in, and benefit from, the goods, facilities, services, and accommodations thereof.
 12 Plaintiff seeks injunctive relief and damages pursuant to the Americans with Disabilities Act of
 13 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code §§51, 51.5 and 54, *et seq.*; and California
 14 Health & Safety Code §19955, *et seq.*

15 2. Plaintiff brings this action acting as a "private attorney general" privatizing
 16 enforcement of the American with Disabilities Act of 1990 ("ADA") without the American tax
 17 payer(s) bearing the financial tax burden for such action.

18 3. Plaintiff is a person with physical disabilities who, on or about July 3, 2016
 19 (and deterred thereafter), was an invitee, guest, patron, customer at defendants' Hilton Sonoma
 20 Wine Country, in the City of Santa Rosa, California. At said time(s) and place, defendants failed
 21 to provide proper legal access to the Inn, which is a "public accommodation" and/or a "public
 22 facility" including, but not limited to signage, parking, accessible routes, ramps, restrooms and
 23 guest rooms. The denial of access was in violation of both federal and California legal
 24 requirements, and plaintiff(s) suffered violation of her civil rights to full and equal access, and
 25 was embarrassed and humiliated.

26 **JURISDICTION AND VENUE:**

27 4. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
 28 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*

Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same nucleus of operative facts and arising out of the same transactions, are also brought under parallel California law, whose goals are closely tied with the ADA, including but not limited to violations of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et seq.*, including §19959; and California Building Code.

5. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is founded on the facts that the real property which is the subject of this action is located at/near 3555 Round Barn Blvd., in the City of Santa Rosa, County of Sonoma, State of California, and that plaintiff's causes of action arose in this county.

PARTIES:

6. Plaintiff MARY ELLEN ESCARENO is a "physically handicapped person," a "physically disabled person," and a "person with physical disabilities" (hereinafter the terms "physically disabled," "physically handicapped" and "person with physical disabilities" are used interchangeably, as these words have similar or identical common usage and legal meaning, but the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54 and 54.1, and other statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff MARY ELLEN ESCARENO suffers from an arthritic condition which effects both knees. Plaintiff MARY ELLEN ESCARENO uses a walker to ambulate at home and uses a manual wheelchair to travel about in public with the assistance of a third party "pusher". Consequently, plaintiff MARY ELLEN ESCARENO is a member of that portion of the public whose rights are protected by the provisions of Health & Safety Code §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*

7. **DEFINITIONS:**

- a. **ADAAG** - The Americans with Disabilities Act Accessibility Guidelines of 1990; and 2010 ADA Standards

- 1 b. **2010 ADA STANDARDS** - The revised regulations for Title II and III of
2 the Americans with Disabilities Act of 1990 in the Federal Register as of
3 September 15, 2010;
- 4 c. **ARCHITECTURAL BARRIERS** - Architectural barriers are physical
5 features that limit or prevent people with disabilities from obtaining the
6 goods or services that are offered. They can include but are not limited to
7 the following examples: parking spaces that are too narrow to
8 accommodate people who use wheelchairs; a step or steps at the entrance
9 or to part of the selling space of a store; round doorknobs or door hardware
10 that is difficult to grasp; aisles that are too narrow for a person using a
11 wheelchair; electric scooter, or a walker; a high counter or narrow
12 checkout aisles at a cash register, and fixed tables in eating areas that are
13 too low to accommodate a person using a wheelchair or that have fixed
14 seats that prevent a person using a wheelchair from pulling under the table.
15 Excerpted from the “*ADA Guide for Small Businesses*” with an
16 interlineation modification. <http://www.ada.gov/smbustxt.htm>.
17 (The descriptive use of the word “barriers” as used herein is synonymous
18 with architectural barriers).
- 19 d. **ELEMENTS** - An architectural or mechanical component of a building,
20 facility, space, or site (e.g., telephone, curb ramp, door, flush valve,
21 drinking fountain, seating, or water closet, toilet seat, dispensers) and/or
22 placement or lack thereof.
- 23 e. **CATEGORICAL ARCHITECTURAL BARRIERS** - Are elements and
24 facilities which are, or can be architectural barriers standing alone or in
25 combination with one another where the element(s)/facility(s) is/are
26 noncomplying or where the combination thereof creates a category. For
27 example: such as a parking lot, entrance, restroom, lobby, guest room,
28 dining area.

- 1 f. **PHYSICAL FEATURES** - Are synonymous with “Elements.”
- 2 g. **FACILITY** - All or any portion of buildings, structures, site
- 3 improvements, complexes, equipment, roads, walks, passageways, parking
- 4 lots, or other real or personal property located on a site.
- 5 h. **ENTRANCE** - Any access point to a building or portion of a building or
- 6 facility used for the purpose of entering. An entrance includes the
- 7 approach walk, the vertical access leading to the entrance platform, the
- 8 entrance platform itself, vestibules if provided, the entry door(s) or
- 9 gate(s), and the hardware of the entry door(s) or gate(s).
- 10 i. **CLEAR FLOOR SPACE** - The minimum unobstructed floor or ground
- 11 space required to accommodate a single, stationary wheelchair and
- 12 occupant.
- 13 j. **ACCESSIBLE ROUTE** - A continuous unobstructed path connecting all
- 14 accessible elements and spaces of a building or facility. Interior accessible
- 15 routes may include corridors, floors, ramps, elevators, lifts, and clear floor
- 16 space at fixtures. Exterior accessible routes may include parking access
- 17 aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.
- 18 k. **PATH OF TRAVEL** - A continuous path connecting all elements and
- 19 spaces of a building or facility.
- 20 l. **NON COMPLYING** - Not complying with ADAAG and/or the “Readily
- 21 Achievable Standard” of 28 CFR §36.304.
- 22

23 **PRELIMINARY FACTUAL ALLEGATIONS:**

24 8. Plaintiff MARY ELLEN ESCARENO is a “person with physical disabilities,” as
 25 defined by all applicable California and United States laws. Plaintiff MARY ELLEN
 26 ESCARENO suffers from an arthritic condition which effects both knees. Plaintiff MARY
 27 ELLEN ESCARENO uses a walker to ambulate at home and uses a manual wheelchair to travel
 28 about in public with the assistance of a third party “pusher”.

1 9. The Hilton Sonoma Wine Country, herein after referred to as the “Hilton”, is a
2 hotel, located at/near 3555 Round Barn Blvd., Santa Rosa, California. The “Hilton”, its signage,
3 parking, accessible routes, ramps, restrooms and guest rooms, and its other facilities are each a
4 “place of public accommodation or facility” subject to the barrier removal requirements of the
5 Americans with Disabilities Act. On information and belief, each such facility has, since July 1,
6 1970, undergone “alterations, structural repairs and additions,” each of which has subjected the
7 “Hilton” and each of its facilities, its signage, parking, accessible routes, ramps, restrooms and
8 guest rooms to disability access requirements per the Americans with Disabilities Act
9 Accessibility Guidelines (ADAAG), and the California Building Code.

10 10. Defendant PHF II SONOMA LLC, is the owner of the real property
11 (land and building) located at or near 3555 Round Barn Blvd., Santa Rosa, California.

12 11. Defendants HILTON SONOMA WINE COUNTRY; PHF II SONOMA LLC, a
13 Delaware Limited Liability Company; ATRIUM HOSPITALITY LP, a Delaware Limited
14 Partnership (hereinafter alternatively collectively referred to as “defendants”) are the owners and
15 operators, lessors and/or lessees, or agents of the owners, lessors and/or lessees, of the public
16 accommodation known as HILTON SONOMA WINE COUNTRY, located at/near 3555 Round
17 Barn Blvd., Santa Rosa, California, or of the building and/or buildings which constitute said
18 public accommodation.

19 12. At all times relevant to this complaint, defendants HILTON SONOMA WINE
20 COUNTRY; PHF II SONOMA LLC, a Delaware Limited Liability Company; ATRIUM
21 HOSPITALITY LP, a Delaware Limited Partnership, own and operate in joint venture the
22 subject “Hilton” as a public accommodation. This business is open to the general public and
23 conducts business therein. The business is a “public accommodation” or “public facility” subject
24 to the requirements of California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code
25 §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

26 13. At all times relevant to this complaint, defendants HILTON SONOMA WINE
27 COUNTRY; PHF II SONOMA LLC, a Delaware Limited Liability Company; ATRIUM
28 HOSPITALITY LP, a Delaware Limited Partnership are jointly and severally responsible to

1 identify and remove architectural barriers at the subject "Hilton" pursuant to Code of Federal
 2 Regulations title 28, section 36.201(b), which states in pertinent part:

3 **§ 36.201 General**

4 (b) *Landlord and tenant responsibilities.* Both the landlord who
 5 owns the building that houses a place of public accommodation and
 6 the tenant who owns or operates the place of public accommodation
 7 are public accommodations subject to the requirements of this part.
 8 As between the parties, allocation of responsibility for complying
 9 with the obligations of this part may be determined by lease or other
 10 contract.

11 28 CFR §36.201(b)

12 14. At all times stated herein, defendants' and each of them with the knowledge that
 13 each of them had a continuing obligation to identify and remove architectural barriers where it
 14 was readily achievable to do so, failed to adopt a transition plan to provide better and/or
 15 compliant access to the subject accommodation.

16 15. At all times referred to herein and continuing to the present time, defendants, and
 17 each of them, advertised, publicized and held out the HILTON SONOMA WINE COUNTRY;
 18 as being handicapped accessible and handicapped usable.

19 16. At some of the times stated herein, plaintiff MARY ELLEN ESCARENO was in
 20 Santa Rosa, for the purposes of: visiting with her immediate family.

21 17. At said times and place plaintiff MARY ELLEN ESCARENO was provided with
 22 the use of a room in the Burgundy Cabernet Building purchased by her daughter Linda Castillo.

23 18. At said times and place Linda Castillo attempted to purchase a guest room
 24 designed for and designated for the disabled. None were available when Linda Castillo secured a
 25 room.

26 19. On or about July 3, 2016, plaintiff MARY ELLEN ESCARENO was an invitee
 27 and guest at the subject Hilton, with her daughter Linda Castillo and the Castillo family, for
 28 purposes of a family reunion.

 20. On or about July 3, 2016, plaintiff MARY ELLEN ESCARENO encountered the
 following architectural barriers in the parking lot of the Hilton and as a legal result had the

1 following adverse experiences: The parking stalls outside the Burgundy Cabernet Building had a
2 built up ramp in the access aisle and as a legal result it was difficult to ascend the ramp and the
3 side slopes put plaintiff MARY ELLEN ESCARENO at risk of tipping over. This was of
4 concern to plaintiff MARY ELLEN ESCARENO.

5 21. On or about July 3, 2016, plaintiff MARY ELLEN ESCARENO encountered the
6 following architectural barriers on the ramps connecting the Burgundy Cabernet building with
7 the sidewalk adjacent to the parking lot and as a legal result had the following adverse
8 experiences: There were/are two ramps that meet together forming a “V”. The ramp coming
9 from the building entrance is constructed with wood and abuts a concrete ramp which connects to
10 the sidewalk. The wood ramp had an approximately one inch “lip” where the two ramps connect.
11 No level landing was between the ramps. As a legal result when plaintiff MARY ELLEN
12 ESCARENO in her wheelchair was being pushed by her son Jose Velasco the wheels hit the lip.
13 The wheelchair stopped abruptly and MARY ELLEN ESCARENO was thrown out of her
14 wheelchair landing and breaking her right fibula.

15 22. On or about and before July 3, 2016, plaintiff MARY ELLEN ESCARENO is
16 informed and believes that there were not the requisite number of guest rooms by classification
17 for the disabled.

18 23. On or about July 3, 2016, plaintiff MARY ELLEN ESCARENO is informed and
19 believes that the men’s and women’s restrooms in serving the lobby of the Hilton were not
20 accessible nor were the computers in the lobby.

21 24. At said time(s) and place, plaintiff MARY ELLEN ESCARENO had need to use
22 a restroom. It did not matter whether it was designated as a men’s or women’s restroom as long
23 as it was accessible.

24 25. Therefore, at said time(s) and place, plaintiff MARY ELLEN ESCARENO,
25 encountered the following architectural barriers as stated herein or lack thereof and/or “elements”
26 and “facilities” which constituted architectural barriers and/or categorical architectural barriers
27 and a denial of the proper and legally required access to a public accommodation to persons with
28 physical disabilities including, but not limited to:

- A. lack of directional signage to show accessible routes of travel, i.e. entrances;
 - B. lack of the requisite type and number of disabled parking stall(s);
 - C. lack of disabled van accessible parking stall(s); with ramps in the access aisles with forward slopes in excess of 8.33% and side slopes ranging from 23% to 31%;
 - D. lack of a handicapped-accessible women's public restroom in the lobby;
 - E. lack of a handicapped-accessible men's public restroom in the lobby;
 - F. lack of handicapped accessible guest room with two beds and bathroom within;
 - G. lack of the requisite number of accessible guest rooms by classification;
 - H. lack of reduced door pressure throughout;
 - I. lack of curb cuts throughout the Hilton grounds;
 - J. lack of compliant ramps and level landing serving the Burgundy Cabernet building;
 - K. lack of compliant hand railings;
 - L. lack of signage, policies, procedures and guidelines to ensure the person(s) with disabilities to the maximum extent possible have an opportunity to share in the same goods, services and opportunities as those afforded to able-bodied persons;
 - M. On personal knowledge, information and belief, other public facilities and elements too numerous to list were inaccessible to plaintiff(s) and for use by other persons with physical disabilities similarly situated.
- ;
- N. Plaintiff is informed and believes defendants lack a policy, practice and procedure of having available guest rooms for persons with disabilities. (Plaintiff seeks the implementation of a policy, practice and procedure that handicapped accessible guest room(s) will not be sold unless specifically requested or until all other rooms are sold to the general public to ensure the availability of guest rooms to persons with disabilities. That the person making a reservation for a handicap accessible guestroom be provided with a confirmation that so states).

Therefore, as a legal result of encountering each of said elements, plaintiff experienced one, all, or a combination of the following difficulties: stress, strain, difficulty, and discomfort to his/her upper extremities in attempting to and/or using said elements also causing anxiety, disappointment, and embarrassment.

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1 26. At all time(s) as stated herein, plaintiff encountered architectural barrier(s) as
2 stated herein and/or had personal knowledge of said barrier(s) and knew it would be a futile
3 gesture to attempt to overcome it/them because of her disability.

4 27. At all times stated herein, it was “readily achievable” for defendants to remove
5 some and/or all of the architectural barriers complained of over a reasonable period of time from
6 the date that defendants initially took possession to meet the affirmative duty to identify and
7 remove architectural barriers where it is readily achievable to do so. In that regard, defendants
8 could have but did not avail themselves of the tax deduction and tax credits provided by Internal
9 Revenue Services (“IRS”) codes 44 and 190, which apply to the costs of barrier removal.

10 28. At all time(s) and place, each architectural element as stated herein that did
11 not strictly comply with or substantially comply with the ADAAG minimum requirements
12 constituted an architectural barrier which precluded plaintiff from full and equal opportunities
13 afforded to non disabled persons to the goods and services of the Hilton.

14 29. At said time(s) and place, when plaintiff encountered the architectural barriers as
15 stated herein, and/or in seeing a barrier(s) and/or attempting to overcome the barriers to gain
16 access experienced any one or combination of physical difficulty, discomfort, embarrassment,
17 stress, strain, fatigue, anger, annoyance and disappointment. This constitutes a denial of full and
18 equal access to the subject public accommodation and a denial of the opportunity to
19 independently enjoy and participate in the opportunities, goods and services offered to non
20 disabled persons and patrons, invitees and guests.

21 30. Said architectural barrier(s) as stated herein deprived and deterred plaintiff
22 the same full and equal access that a non wheelchair user/non disabled person would enjoy while
23 engaging in the goods, service and opportunities offered at the subject Hilton.

24 31. At all times stated herein, the existence of architectural barriers at
25 defendants’ place of public accommodation evidenced “actual notice” of defendants’ intent not
26 to comply with the Americans with Disabilities Act of 1990 either then, now or in the future.

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28 ///

1 32. As a legal result of defendants' and each of their failure to act as a reasonable and
2 prudent public accommodation in identifying, removing or creating architectural barriers, policies,
3 practices and procedures that denied access to plaintiff and other persons with disabilities,
4 plaintiff suffered the damages as alleged herein.

5 33. As a result of the denial of equal access to defendants' facilities due to the acts and
6 omissions of defendants, and each of them, in owning, operating and maintaining these subject
7 public facilities, plaintiff MARY ELLEN ESCARENO suffered violations of plaintiff's civil
8 rights, including, but not limited to rights under Civil Code §§51, 52, 54, 54.1, and 54.3, *et seq.*
9 And, plaintiff MARY ELLEN ESCARENO suffered from anyone of the following conditions
10 and/or combination thereof: fatigue, stress, strain and pain in wheeling and attempting to and/or
11 transferring up, on, down, to, over, around and through architectural barriers.

12 34. Further, plaintiff suffered emotional distress, mental distress, mental suffering,
13 mental anguish, which includes, but is not limited to, shame, humiliation, embarrassment, upset,
14 anger, frustration, disappointment and worry, expectedly and naturally associated with a person
15 with physical disabilities encountering architectural barrier(s) as stated herein and being denied
16 access, all to his/her damages as prayed hereinafter in an amount within the jurisdiction of this
17 court. No claim is being made for mental and emotional distress over and above that is usually
18 associated with the encountering of architectural barriers and legally resulting in adverse
19 experiences. No expert testimony regarding this usual mental and emotional distress will be
20 presented at trial in support of the claim for damages.

21 35. Defendants', and each of their, failure to remove the architectural barriers
22 complained of herein created, at the time of plaintiff's first visit to said public accommodation,
23 and continues to create continuous and repeated exposure to substantially the same general
24 harmful conditions which caused plaintiff harm as stated herein.

25 36. Plaintiff MARY ELLEN ESCARENO was denied her rights to equal access to a
26 public facility by defendants HILTON SONOMA WINE COUNTRY; PHF II SONOMA LLC;
27 ATRIUM HOSPITALITY LP, because defendants HILTON SONOMA WINE COUNTRY; PHF
28 II SONOMA LLC; ATRIUM HOSPITALITY LP, maintained a hotel without access for persons

1 with physical disabilities to its facilities, including but not limited to the signage, parking,
2 accessible routes, ramps, restrooms, guest rooms, and other public areas as stated herein, and
3 continue to the date of filing this complaint to deny equal access to plaintiff and other persons
4 with physical disabilities in these and other ways.

5 37. Construction alterations, if any, carried out by defendants have also triggered
6 access requirements under both California law and the Americans with Disabilities Act of 1990.

7 38. Defendants may have intentionally undertaken to modify and alter existing
8 building(s), and may have failed to make them comply with accessibility requirements under the
9 requirements of ADAAG and California Building Code.

10 39. Because of defendants' violations, plaintiff and other persons with physical
11 disabilities are unable to use public facilities such as those owned and operated by defendants on a
12 "full and equal" basis unless such facility is in compliance with the provisions of the Americans
13 with Disabilities Act of 1990, Civil Code §51, Civil Code §54.1 and Health & Safety Code
14 §19955, *et seq.* and other accessibility law as pled herein. Plaintiff seeks an order from this court
15 compelling defendants to make the Hilton accessible to persons with disabilities.

16 40. Plaintiff, as described herein below, seeks injunctive relief to require the
17 Hilton to be made accessible to meet the requirements of both California law and the Americans
18 with Disabilities Act of 1990, whichever is more restrictive, so long as defendants operate the
19 hotel as a public facility.

20 41. Plaintiff believes that even with service of the summons and complaint on
21 defendant(s) and each of them, that defendant(s) will not, under their "continuing obligation"
22 immediately undertake remedial action to identify and remove architectural barriers.

23 42. Plaintiff seeks damages for violation of her civil rights on July 3, 2016 and
24 **deterrence occasion(s)** and seeks statutory damages of not less than \$4,000, pursuant to Civil
25 Code §52(a), for each day after his/her visit that the trier of fact (court/jury) determines was the
26 date that some or all remedial work should have been completed under the standard that the
27 landlord and tenant had an ongoing duty to identify and remove architectural barriers where it was
28 readily achievable to do so, which deterred plaintiff from returning to the subject public

1 accommodation because of his/her knowledge and/or belief that neither some or all architectural
2 barriers had been removed and that said premises remains inaccessible to persons with disabilities
3 whether a wheelchair user or otherwise. The acts and omission of defendants, and each of them,
4 in failing to provide the required accessible public facilities at the time of plaintiff's visit and
5 injuries, indicate actual and implied malice toward plaintiff, and despicable conduct carried out by
6 defendants, and each of them, with a willful and conscious disregard for the rights and safety of
7 plaintiff and other similarly situated persons, and justify a trebling of damages as provided by
8 Civil Code §§52(a) and 54.3, in order to make a more profound example of defendants, and each
9 of them, to other operators and landlords of other Hotels, Motels, Inns and other public facilities,
10 and to punish defendants and to carry out the purposes of the Civil Code §§ 51, 51.5 and 54.

11 43. Plaintiff is informed and believes and therefore alleges that defendants HILTON
12 SONOMA WINE COUNTRY; PHF II SONOMA LLC; ATRIUM HOSPITALITY LP, and each
13 of them, caused the subject building(s) which constitute the Hilton to be constructed, altered and
14 maintained in such a manner that persons with physical disabilities were denied full and equal
15 access to, within and throughout said building(s) of the Hilton and were denied full and equal use
16 of said public facilities. Furthermore, on information and belief, defendants have continued to
17 maintain and operate said hotel and/or its building(s) in such conditions up to the present time,
18 despite actual and constructive notice to such defendants that the configuration of the Hilton
19 and/or its building(s) is in violation of the civil rights of persons with physical disabilities, such as
20 plaintiff and other members of the disability community. Such construction, modification,
21 ownership, operation, maintenance and practices of such public facilities are in violation of Civil
22 Code §§51, 51.5 and 54, Health and Safety Code §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

23 44. Defendants' actual and constructive notice that the physical configuration of the
24 facilities including, but not limited to, architectural barriers constituting the Hilton and/or
25 building(s) was in violation of the civil rights of persons with physical disabilities, such as
26 plaintiff, includes, but is not limited to, coming into contact with public accommodations with
27 accessible elements and facilities since January 26, 1991, communications with invitees and
28 guests, plaintiff MARY ELLEN ESCARENO herself, possibly sponsors of conferences, owners

1 of other restaurants, hotels, motels and businesses, notices they obtained from governmental
 2 agencies upon modification, improvement, or substantial repair of the subject premises and other
 3 properties owned by these defendants, newspaper articles and trade publications regarding the
 4 Americans with Disabilities Act of 1990 and other access laws, public service announcements by
 5 former U.S. Attorney General Janet Reno between 1993 and 2000, and other similar information.
 6 Defendants' failure, under state and federal law, to make the Hilton accessible is further evidence
 7 of defendants' conscious disregard for the rights of plaintiff and other similarly situated persons
 8 with disabilities. Despite being informed of such effect on plaintiff and other persons with
 9 physical disabilities due to the lack of accessible facilities, defendants, and each of them,
 10 knowingly and willfully refused to take any steps to rectify the situation and to provide full and
 11 equal access for plaintiff and other persons with physical disabilities to the Hilton. Said
 12 defendants, and each of them, have continued such practices, in conscious disregard for the rights
 13 of plaintiff and other persons with physical disabilities, up to the date of filing of this complaint,
 14 and continuing thereon. Defendants had further actual knowledge of the architectural barriers
 15 referred to herein by virtue of the demand letter addressed to the defendants and served
 16 concurrently with the summons and complaint. Said conduct, with knowledge of the effect it was
 17 and is having on plaintiff and other persons with physical disabilities, constitutes despicable
 18 conduct in conscious disregard of the rights and safety of plaintiff and of other similarly situated
 19 persons, justifying the imposition of treble damages per Civil Code §§52 and 54.3.

20 45. Plaintiff MARY ELLEN ESCARENO and the disability community, including
 21 4A4U, consisting of persons with disabilities, would, could and will return to the subject public
 22 accommodation when it is made accessible to persons with disabilities.

23 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
 24 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
 25 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**
 26 (On behalf of Plaintiff MARY ELLEN ESCARENO, and Against Defendants HILTON
 SONOMA WINE COUNTRY; PHF II SONOMA LLC, a Delaware Limited Liability
 Company; ATRIUM HOSPITALITY LP, a Delaware Limited Partnership, inclusive)
 (42 U.S.C. §12101, *et seq.*)

27 46. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
 28 the allegations contained in paragraphs 1 through 45 of this complaint.

1 47. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
2 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
3 protect:

4 some 43 million Americans with one or more physical or mental
5 disabilities; [that] historically society has tended to isolate and
6 segregate individuals with disabilities; [that] such forms of
7 discrimination against individuals with disabilities continue to be a
8 serious and pervasive social problem; [that] the nation's proper
9 goals regarding individuals with disabilities are to assure equality of
10 opportunity, full participation, independent living and economic
11 self-sufficiency for such individuals; [and that] the continuing
12 existence of unfair and unnecessary discrimination and prejudice
13 denies people with disabilities the opportunity to compete on an
14 equal basis and to pursue those opportunities for which our free
15 society is justifiably famous.

16 48. Congress stated as its purpose in passing the Americans with Disabilities Act of
17 1990 (42 U.S.C. §12102):

18 It is the purpose of this act (1) to provide a clear and comprehensive
19 national mandate for the elimination of discrimination against
20 individuals with disabilities; (2) to provide clear, strong, consistent,
21 enforceable standards addressing discrimination against individuals
22 with disabilities; (3) to ensure that the Federal government plays a
23 central role in enforcing the standards established in this act on
24 behalf of individuals with disabilities; and (4) to invoke the sweep
25 of Congressional authority, including the power to enforce the 14th
26 Amendment and to regulate commerce, in order to address the
27 major areas of discrimination faced day to day by people with
28 disabilities.

29 49. As part of the Americans with Disabilities Act of 1990, Public Law 101-336
30 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
31 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
32 accommodations identified for purposes of this title was:

33 (7) PUBLIC ACCOMMODATION - The following private
34 entities are considered public accommodations for purposes of this
35 title, if the operations of such entities affect commerce -
36 Check appropriate description:

37 (A) an inn, hotel, motel, or other place of lodging, except for
38 an establishment located within a building that contains not more
39 than five rooms for rent or hire and that is actually occupied by the
40 proprietor of such establishment as the residence of such proprietor;

41 42 U.S.C. §12181(7)(A)

1 50. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated against
2 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
3 privileges, advantages, or accommodations of any place of public accommodation by any person
4 who owns, leases, or leases to, or operates a place of public accommodation.”

5 51. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
6 42 U.S.C. §12182(b)(2)(a) are:

7 (I) the imposition or application of eligibility criteria
8 that screen out or tend to screen out an individual with a disability
9 or any class of individuals with disabilities from fully and equally
10 enjoying any goods, services, facilities, privileges, advantages, or
11 accommodations, unless such criteria can be shown to be necessary
12 for the provision of the goods, services, facilities, privileges,
13 advantages, or accommodations being offered;

14 (ii) a failure to make reasonable modifications in
15 policies, practices, or procedures, when such modifications are
16 necessary to afford such goods, services, facilities, privileges,
17 advantages or accommodations to individuals with disabilities,
18 unless the entity can demonstrate that making such modifications
19 would fundamentally alter the nature of such goods, services,
20 facilities, privileges, advantages, or accommodations;

21 (iii) a failure to take such steps as may be necessary to
22 ensure that no individual with a disability is excluded, denied
23 services, segregated or otherwise treated differently than other
24 individuals because of the absence of auxiliary aids and services,
25 unless the entity can demonstrate that taking such steps would
26 fundamentally alter the nature of the good, service, facility,
27 privilege, advantage, or accommodation being offered or would
28 result in an undue burden;

 (iv) a failure to remove architectural barriers, and
communication barriers that are structural in nature, in existing
facilities . . . where such removal is readily achievable; and

 (v) where an entity can demonstrate that the removal of
a barrier under clause (iv) is not readily achievable, a failure to
make such goods, services, facilities, privileges, advantages or
accommodations available through alternative methods if such
methods are readily achievable.

25 The acts of defendants set forth herein were a violation of plaintiff’s rights under the ADA, Public
26 Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective
27 January 31, 1993, the standards of the ADA were also incorporated into California Civil Code
28 §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

1 52. The removal of the barriers complained of by plaintiff as hereinabove alleged were
2 at all times after January 26, 1992 “readily achievable” as to the subject building(s) of the Hilton
3 pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal of all
4 the barriers complained of herein together was not “readily achievable,” the removal of each
5 individual barrier complained of herein was “readily achievable.” On information and belief,
6 defendants’ failure to remove said barriers was likewise due to discriminatory practices,
7 procedures and eligibility criteria, as defined by 42 U.S.C. §12182 (b)(2)(A)(i)and (ii).

8 53. Per 42 U.S.C. §12181 (9), the term “readily achievable” means “easily
9 accomplishable and able to be carried out without much difficulty or expense.” The statute
10 defines relative “expense” in part in relation to the total financial resources of the entities
11 involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that
12 plaintiff complains of herein were and are “readily achievable” by the defendants under the
13 standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was
14 not “readily achievable” for defendants to remove each of such barriers, defendants have failed to
15 make the required services available through alternative methods which were readily achievable.

16 54. On information and belief, construction work on, and modifications of, the subject
17 building(s) of the Hilton occurred after the compliance date for the Americans with Disabilities
18 Act, January 26, 1992, independently triggering access requirements under Title III of the ADA.

19 55. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
20 *seq.*, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil Rights
21 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on the basis
22 of disability in violation of this title or have reasonable grounds for believing that plaintiff is about
23 to be subjected to discrimination in violation of §302. Plaintiff is deterred from returning to or
24 making use of the public facilities complained of herein so long as the premises and defendants’
25 policies bar full and equal use by persons with physical disabilities.

26 56. 42 U.S.C. 12188 (a)(1) states: “Nothing in this section shall require a person with a
27 disability to engage in a futile gesture if such person has actual notice that a person or
28 organization covered by this title does not intend to comply with its provisions.” Pursuant to this

section, plaintiff MARY ELLEN ESCARENO has not returned to defendants' premises since on or about July 3, 2016, but on information and belief, alleges that defendants have continued to violate the law and deny the rights of plaintiff and of other persons with physical disabilities to access this public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title."

57. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement the Americans with Disabilities Act of 1990, including but not limited to an order granting injunctive relief and attorneys' fees. Plaintiff will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.
(On Behalf of Plaintiff MARY ELLEN ESCARENO, and Against Defendants HILTON SONOMA WINE COUNTRY; PHF II SONOMA LLC, a Delaware Limited Liability Company; ATRIUM HOSPITALITY LP, a Delaware Limited Partnership, inclusive)
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

58. Plaintiff repleads and incorporates by reference as if fully set forth again herein, the allegations contained in paragraphs 1 through 57 of this complaint.

59. At all times relevant to this action, California Civil Code §54 has provided that persons with physical disabilities are not to be discriminated against because of physical handicap or disability. This section provides that:

(a) Individuals with disabilities . . . have the same rights as the general public to full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, and other public places.

60. California Civil Code §54.1 provides that persons with disabilities shall not be denied full and equal access to places of public accommodation or facilities:

(a)(1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains,

motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.
Civil Code §54.1(a)(1)

61. California Civil Code §54.1 further provides that a violation of the Americans with Disabilities Act of 1990 constitutes a violation of section 54.1:

(d) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section, and nothing in this section shall be construed to limit the access of any person in violation of that act.

Civil Code §54.1(d)

62. Plaintiff MARY ELLEN ESCARENO is a person within the meaning of Civil Code §54.1 whose rights have been infringed upon and violated by the defendants, and each of them, as prescribed by Civil Code §§54 and 54.1. Each specific architectural barrier which defendants knowingly and willfully fail and refuse to remove constitutes a separate act in violation of Civil Code §§54 and 54.1. Plaintiff has been and continues to be denied full and equal access to defendants' Hilton. As a legal result, plaintiff is entitled to seek damages pursuant to a court or jury determination, in accordance with California Civil Code §54.3(a) for each day on which she visited or have been deterred from visiting the Hilton because of her knowledge and belief that the Hilton is inaccessible to persons with disabilities.

California Civil Code §54.3(a) provides:

Any person or persons, firm or corporation, who denies or interferes with admittance to or enjoyment of the public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages and any amount as may be determined by a jury, or the court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than . . . one thousand dollars (\$1,000) and . . . attorney's fees as may be determined by the court in addition thereto, suffered by any person denied any of the rights provided in Sections 54, 54.1 and 54.2.

Civil Code §54.3(a)

63. On or about July 3, 2016 , and **deterrence occasion(s)** plaintiff MARY ELLEN ESCARENO suffered violations of Civil Code §§54 and 54.1 in that plaintiff was denied access to signage, parking, accessible routes, ramps, restrooms, guest rooms and other public facilities as stated herein at the HILTON and on the basis that plaintiff MARY ELLEN ESCARENO was a person with physical disabilities.

64. As a result of the denial of equal access to defendants' facilities due to the acts and omissions of defendants, and each of them, in owning, operating and maintaining these subject public facilities, plaintiff MARY ELLEN ESCARENO suffered violations of plaintiff's civil rights, including, but not limited to rights under Civil Code §§51, 52, 54, 54.1, and 54.3, *et seq.* And, plaintiff MARY ELLEN ESCARENO suffered from anyone of the following conditions and/or combination thereof: fatigue, stress, strain and pain in wheeling and attempting to and/or transferring up, on, down, to, over, around and through architectural barriers.

65. Further, plaintiff suffered emotional distress, mental distress, mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation, embarrassment, upset, anger, frustration, disappointment and worry, expected and naturally associated with a person with physical disabilities encountering architectural barrier(s) as stated herein and being denied access, all to his/her damages as prayed hereinafter in an amount within the jurisdiction of this court. No claim is being made for mental and emotional distress over and above that is usually associated with the encountering of architectural barriers and legally resulting in adverse experiences. No expert testimony regarding this usual mental and emotional distress will be presented at trial in support of the claim for damages.

66. Plaintiff has been damaged by defendants', and each of their, wrongful conduct and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 for violation of plaintiff's rights as a person or an entity that represents persons with physical disabilities on or about July 3, 2016 and **deterrence occasion(s)**, and on a continuing basis since then, including statutory damages, a trebling of all of actual damages, general and special damages available pursuant to §54.3 of the Civil Code according to proof.

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67. As a result of defendants', and each of their, acts and omissions in this regard, plaintiff has been required to incur legal expenses and hire attorneys in order to enforce plaintiff's rights and enforce the provisions of the law protecting access for persons with physical disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to the provisions of Civil Code §54.3, plaintiff therefore will seek recovery in this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally, plaintiff's lawsuit is intended not only to obtain compensation for damages to plaintiff, but also to compel the defendants to make their facilities accessible to all members of the public with disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to the provisions of §1021.5 of the Code of Civil Procedure.

III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, *ET. SEQ.*
 (On Behalf of Plaintiff MARY ELLEN ESCARENO, and Against Defendants HILTON SONOMA WINE COUNTRY; PHF II SONOMA LLC, a Delaware Limited Liability Company; ATRIUM HOSPITALITY LP, a Delaware Limited Partnership, inclusive)
 (Health & Safety Code §19955, *et seq.*)

68. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 67 of this complaint.

69. Health & Safety Code §19955 provides in pertinent part:

The purpose of this part is to insure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code. For the purposes of this part "public accommodation or facilities" means a building, structure, facility, complex, or improved area which is used by the general public and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums, and convention centers. When sanitary facilities are made available for the public, clients or employees in such accommodations or facilities, they shall be made available for the handicapped.

70. Health & Safety Code §19956, which appears in the same chapter as §19955, provides in pertinent part, "accommodations constructed in this state shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code" Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all public accommodations constructed or altered after that date. On information and belief, portions

1 of the HILTON and/or of the building(s) were constructed and/or altered after July 1, 1970, and
2 substantial portions of the HILTON and/or the building(s) had alterations, structural repairs,
3 and/or additions made to such public accommodations after July 1, 1970, thereby requiring said
4 public accommodation and/or building to be subject to the requirements of Part 5.5, §19955, *et*
5 *seq.*, of the Health & Safety Code upon such alteration, structural repairs or additions per Health
6 & Safety Code §19959.

7 71. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State
8 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,
9 1982, Title 24 of the California Building Standards Code adopted the California State Architect's
10 Regulations and these regulations must be complied with as to any alterations and/or
11 modifications of the Hilton and/or the building(s) occurring after that date. Construction changes
12 occurring prior to this date but after July 1, 1970 triggered access requirements pursuant to the
13 "ASA" requirements, the American Standards Association Specifications, A117.1-1961. On
14 information and belief, at the time of the construction and modification of said building, all
15 buildings and facilities covered were required to conform to each of the standards and
16 specifications described in the American Standards Association Specifications and/or those
17 contained in the California Building Code.

18 72. Hotels such as the Hilton are "public accommodations or facilities" within the
19 meaning of Health & Safety Code §19955, *et seq.*

20 73. As a result of the actions and failure to act of defendants, and as a result of the
21 failure to provide proper and legally handicapped-accessible public facilities, plaintiff was denied
22 plaintiff's rights to full and equal access to public facilities and suffered a loss of plaintiff's civil
23 rights and plaintiff's rights as a person with physical disabilities to full and equal access to public
24 facilities.

25 74. Attorneys' Fees - As a result of defendants' acts and omissions in this regard,
26 plaintiff has been required to incur legal expenses and hire attorneys in order to enforce plaintiff's
27 civil rights and enforce provisions of the law protecting access for the persons with physical
28 disabilities and prohibiting discrimination against the persons with physical disabilities, and to

1 take such action both in plaintiff's own interests and in order to enforce an important right
 2 affecting the public interest. Plaintiff, therefore, seeks in this lawsuit the recovery of all
 3 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure
 4 §1021.5. Plaintiff additionally seeks attorneys' fees pursuant to Health & Safety Code §19953
 5 and Civil Code §§54.3 and/or in the alternative, plaintiff will seek attorneys' fees, costs and
 6 litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-3(a)).
 7 Plaintiff will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

8 75. Plaintiff seeks injunctive relief for an order compelling defendants, and each of
 9 them, to make the subject place of public accommodation readily accessible to and usable by
 10 persons with disabilities.

11 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND**
 12 **EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES**
 13 **AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET**
 14 **SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

15 (On Behalf of Plaintiff MARY ELLEN ESCARENO, and Against Defendants HILTON
 16 SONOMA WINE COUNTRY; PHF II SONOMA LLC, a Delaware Limited Liability
 17 Company; ATRIUM HOSPITALITY LP, a Delaware Limited Partnership, inclusive)
 18 (Civil Code §51, 51.5)

19 76. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
 20 the allegations contained in paragraphs 1 through 75 of this complaint.

21 77. Defendants' actions and omissions and failure to act as a reasonable and prudent
 22 public accommodation in identifying, removing and/or creating architectural barriers, policies,
 23 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The
 24 Unruh Act provides:

25 This section shall be known, and may be cited, as the Unruh
 26 Civil Rights Act.

27 All persons within the jurisdiction of this state are free and
 28 equal, and no matter what their sex, race, color, religion, ancestry,
 national origin, or **disability** are entitled to the full and equal
 accommodations, advantages, facilities, privileges, or services in all
 business establishments of every kind whatsoever.

This section shall not be construed to confer any right or
 privilege on a person that is conditioned or limited by law or that is
 applicable alike to persons of every sex, color, race, religion,
 ancestry, national origin, or **disability**.

Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure . . . nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other . . . laws.

A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the “intent” of the defendants in not complying with barrier removal is not an issue. Hence, the failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or failing to act to identify and remove barriers can be construed as a “negligent per se” act of defendants, and each of them.

78. The acts and omissions of defendants stated herein are discriminatory in nature and in violation of Civil Code §51.5:

No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, refuse to buy from, sell to, or trade with any person in this state because of the race, creed, religion, color, national origin, sex, or **disability** of the person or of the person’s partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers.

As used in this section, “person” includes any person, firm association, organization, partnership, business trust, corporation, limited liability company, or company.

Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure . . . nor shall anything in this section be construed to augment, restrict or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

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79. Defendants' acts and omissions as specified have denied to the plaintiff full and equal accommodations, advantages, facilities, privileges and services in a business establishment, on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil Code §51, "A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section." Plaintiff accordingly incorporates the entirety of her above cause of action for violation of the Americans with Disabilities Act at ¶46, *et seq.*, as if repled herein.

80. As a result of the denial of equal access to defendants' facilities due to the acts and omissions of defendants, and each of them, in owning, operating and maintaining these subject public facilities, plaintiff MARY ELLEN ESCARENO suffered violations of plaintiff's civil rights, including, but not limited to rights under Civil Code §§51, 52, 54, 54.1, and 54.3, *et seq.* And, plaintiff MARY ELLEN ESCARENO suffered bodily injury at time(s) stated herein, including, but not limited to anyone of the following conditions and/or combination thereof: fatigue, stress, strain and pain in wheeling and attempting to and/or transferring up, on, down, to, over, around and through architectural barriers. Specifically, as a legal result of defendants negligence in the design, construction and maintenance of the existing Hilton. And, plaintiff MARY ELLEN ESCARENO suffered from anyone of the following conditions and/or combination thereof: fatigue, stress, strain and pain in wheeling and attempting to and/or transferring up, on, down, to, over, around and through architectural barriers.

81. Further, plaintiff suffered emotional distress, mental distress, mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation, embarrassment, upset, anger, frustration, disappointment and worry, expectedly and naturally associated with a person with physical disabilities encountering architectural barrier(s) as stated herein and being denied access, all to her damages as prayed hereinafter in an amount within the jurisdiction of this court. No claim is being made for mental and emotional distress over and above that is usually associated with the encountering of architectural barriers and legally resulting in adverse experiences. No expert testimony regarding this usual mental and emotional distress will be

presented at trial in support of the claim for damages.

82. Plaintiff is entitled to the rights and remedies of §52(a) of the Civil Code, including trebling of actual damages (defined by §52(h) of the Civil Code to mean “special and general damages”), as well as to reasonable attorneys’ fees and costs, as is allowed by statute, according to proof if deemed to be the prevailing party.

PRAYER:

Plaintiff prays that this court award damages and provide relief as follows:

I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*) (On Behalf of Plaintiff MARY ELLEN ESCARENO, and Against Defendants HILTON SONOMA WINE COUNTRY; PHF II SONOMA LLC, a Delaware Limited Liability Company; ATRIUM HOSPITALITY LP, a Delaware Limited Partnership, inclusive) (42 U.S.C. §12101, *et seq.*)

1. For injunctive relief, compelling defendants HILTON SONOMA WINE COUNTRY; PHF II SONOMA LLC, a Delaware Limited Liability Company; ATRIUM HOSPITALITY LP, a Delaware Limited Partnership, inclusive, to make the Hilton Sonoma Wine Country, located at 3555 Round Barn Blvd., Santa Rosa, California, readily accessible to and usable by individuals with disabilities, per 42 U.S.C §12181, *et seq.*, and to make reasonable modifications in policies, practice, eligibility criteria and procedures so as to afford full access to the goods, services, facilities, privileges, advantages and accommodations being offered;

2. For attorneys’ fees, litigation expenses and costs of suit, if plaintiff is deemed the prevailing party; and

3. For such other and further relief as the court may deem proper.

II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, *ET SEQ.*

(On Behalf of Plaintiff MARY ELLEN ESCARENO, and Against Defendants HILTON SONOMA WINE COUNTRY; PHF II SONOMA LLC, a Delaware Limited Liability Company; ATRIUM HOSPITALITY LP, a Delaware Limited Partnership, inclusive)
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. For injunctive relief, compelling defendants HILTON SONOMA WINE COUNTRY; PHF II SONOMA LLC, a Delaware Limited Liability Company; ATRIUM HOSPITALITY LP, a Delaware Limited Partnership, inclusive, to make the Hilton Sonoma Wine Country, located at 3555 Round Barn Blvd., Santa Rosa, California, readily accessible to and usable by individuals with disabilities, per state law.

2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for each occasion on which plaintiff was deterred from returning to the subject public accommodation;

3. Attorneys' fees pursuant to Civil Code §54.3 and Code of Civil Procedure §1021.5, if plaintiffs are deemed the prevailing party;

4. Treble damages pursuant to Civil Code §54.3;

5. General damages according to proof;

6. For all costs of suit;

7. Prejudgment interest pursuant to Civil Code §3291; and

8. Such other and further relief as the court may deem just and proper.

III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, *ET. SEQ.*

(On Behalf of Plaintiff MARY ELLEN ESCARENO, and Against Defendants HILTON SONOMA WINE COUNTRY; PHF II SONOMA LLC, a Delaware Limited Liability Company; ATRIUM HOSPITALITY LP, a Delaware Limited Partnership, inclusive)
(Health & Safety code §19955, *et seq.*)

1. For injunctive relief, compelling defendants HILTON SONOMA WINE COUNTRY; PHF II SONOMA LLC, a Delaware Limited Liability Company; ATRIUM HOSPITALITY LP, a Delaware Limited Partnership, inclusive, to make the Hilton Sonoma Wine Country, located at 3555 Round Barn Blvd., Santa Rosa, California, readily accessible to and usable by individuals with disabilities, per state law;

2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or, alternatively, Health & Safety Code §19953, if plaintiff is deemed the prevailing party;

3. For all costs of suit;

4. For prejudgment interest pursuant to Civil Code §3291;
5. Such other and further relief as the court may deem just and proper.

IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)
 (On Behalf of Plaintiff MARY ELLEN ESCARENO, and Against Defendants HILTON SONOMA WINE COUNTRY; PHF II SONOMA LLC, a Delaware Limited Liability Company; ATRIUM HOSPITALITY LP, a Delaware Limited Partnership, inclusive)
 (California Civil Code §§51, 51.5, *et seq.*)

1. For injunctive relief, compelling defendants HILTON SONOMA WINE COUNTRY; PHF II SONOMA LLC, a Delaware Limited Liability Company; ATRIUM HOSPITALITY LP, a Delaware Limited Partnership, inclusive, to make the Hilton Sonoma Wine Country, located at 3555 Round Barn Blvd., Santa Rosa, California, readily accessible to and usable by individuals with disabilities, per state law;
2. All statutory damages as afforded by Civil Code §52(a) for the date of incident and for each occasion on which plaintiff was deterred from returning to the subject public accommodation;
3. Attorneys' fees pursuant to Civil Code §52(a), if plaintiff is deemed the prevailing party;
4. General damages according to proof;
5. Treble damages pursuant to Civil Code §52(a);
6. For all costs of suit;
7. Prejudgment interest pursuant to Civil Code §3291; and
8. Such other and further relief as the court may deem just and proper.

Dated: January 16, 2017

THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

By: /s/ Thomas E. Frankovich
 Thomas E. Frankovich
 Attorney for Plaintiff Mary Ellen Escareno

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

Dated: January 16, 2017

THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

By: /s/ Thomas E. Frankovich
Thomas E. Frankovich
Attorney for Plaintiff MARY ELLEN ESCARENO